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DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 500, 501, 580 and 801

RIN 1235-AA28

Authorizing Electronic Payments of Civil Money Penalties.

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Final rule.

SUMMARY: In this final rule, the Department of Labor (Department) revises its regulations issued pursuant to the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), the H-2A provisions of the Immigration and Nationality Act (H-2A), the Fair Labor Standards Act (FLSA), and the Employee Polygraph Protection Act (EPPA) governing the payment of civil money penalties (CMPs) assessed by the Wage and Hour Division (WHD). The regulatory revisions expand the CMP payment methods beyond the options specified in the current text by allowing for the payment of CMPs through an electronic payment alternative, and otherwise amend the regulations to ensure uniform payment instructions. The existing MSPA, H-2A, FLSA, and EPPA regulations require persons assessed a CMP under those statutory schemes to remit payment in person or by mail using a certified check or money order. In recognition of modern payment methods, the Department is amending these regulations to allow for payment of the CMPs via an electronic payment alternative, any successor system, or by any additional payment method that the Department may deem acceptable in the future. This action revises the

regulatory text in the appropriate regulations administered by WHD. This action is intended to simplify payment methods for persons assessed a CMP, and does not impose any new regulatory requirements.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT: Robert Waterman, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number) or email: WHDPRAComments@dol.gov.

SUPPLEMENTARY INFORMATION: Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). Publication of a Notice of Proposed Rulemaking is unnecessary since the agency is merely updating its regulations to add alternatives for payment of CMPs and to improve consistency among its regulations. The rulemaking does not mandate payment via electronic payment method.

This final rule is not a regulatory action under Executive Order 13771 because it is not a significant action under Executive Order 12866.

I. Background

The Department's regulations at 29 CFR 500.144, 501.22, 580.18, and 801.43 provide instructions for the payment of CMPs assessed by WHD under MSPA, H-2A, the FLSA, and the EPPA. The instructions currently require that payment be remitted by certified check or money order, to be mailed or delivered to WHD. Many members of the

public may find these payment methods sufficient. However, the Department of the Treasury's Bureau of the Fiscal Service (Fiscal Service) analyzed WHD's CMP payment process and recommended that Pay.gov be used as an electronic payment option to improve its cash management practices and reduce paper-based collections. WHD accepted Fiscal Service's recommendation and has fully implemented Pay.gov as an additional method for paying CMPs. Pay.gov is a web transaction portal for public access to federal agency services, sponsored by the United States Department of the Treasury's Fiscal Service.¹ WHD believes that an electronic payment option provides members of the public with a faster and less costly payment method than the current options of delivering or mailing certified checks or money orders. Many members of the public may find it in their interest to remit CMP payments electronically, thereby avoiding the costs associated with money orders, certified checks, certified mail, or courier service, as well as the cost of personnel time required to mail or deliver the CMP payments to WHD. The Department also recognizes that commonly accepted and preferred payment methods may continue to evolve. Accordingly, in this final rule, the Department adds an option for electronic payment of CMPs on www.pay.gov (or any successor system), permits payment via additional means that the Department may deem acceptable, and directs persons who wish to remit payment to WHD by certified check or money order to do so pursuant to WHD instructions that are provided during the resolution of a WHD investigation.²

¹ See <https://www.pay.gov/public/home/notices>.

² The regulation at 29 CFR 503.26 similarly provides instructions for the payment of CMPs assessed by WHD under the H-2B provisions of the Immigration and Nationality Act. This final rule does not amend 29 CFR 503.26. Any revisions to that regulation will be issued separately.

II. Summary of Changes to the Regulations

In 29 CFR 500.144, 501.22, 580.18, and 801.43, the regulatory text currently provides that a person assessed a CMP shall remit promptly by mail or in person the amount to the Secretary by certified check or money order, made payable to the order of WHD. The Department has added a payment alternative to all these provisions to allow persons the option of submitting payment of CMPs electronically through Pay.gov (or any successor system). Recognizing that commonly accepted and preferred payment methods may continue to evolve, the Department has further revised these regulations to permit payment via any additional payment method that the Department may deem acceptable in the future. Instructions for any such additional payment method would be provided during the resolution of a WHD investigation. Additionally, the current text of these regulations lack consistency in their instructions for mailing or delivering CMP payment to WHD when payment is made by certified check or money order. In this final rule, the Department has revised these regulations to eliminate those inconsistencies.

III. Administrative Procedure Act

Section 553(b)(3) of the Administrative Procedure Act (APA) provides that an agency is not required to publish a notice of proposed rulemaking in the Federal Register and solicit public comments when the agency has good cause to find that doing so would be “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. 553(b)(3). The Department finds that good cause exists to dispense with the notice and public comment procedures for these minor amendments to its regulations based on the conclusion that such procedures are unnecessary. This rule adds an electronic payment

option for persons assessed a CMP to submit their CMP payments to the Department and makes other minor changes to ensure consistent payment instructions. This rule does not impose any new regulatory obligations. Therefore, the Department is issuing these regulatory revisions in a final rule.

Section 553(d) of the APA provides that substantive rules should take effect not less than thirty (30) days after the date they are published in the Federal Register unless “otherwise provided by the agency for good cause found[.]” 5 U.S.C. 553(d)(3). Since this rule merely provides alternative payment mechanisms and does not impose any additional regulatory requirements, the Department finds it is unnecessary to delay the effective date of the rule. Accordingly, the Department finds that good cause exists to make this rule effective on the date of publication.

IV. Executive Orders 12866, 13563; Small Business Regulatory Enforcement Fairness Act; Regulatory Flexibility

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulations, as affirmed by Executive Order 13563. Section 6(a)(3) of Executive Order 12866 requires that agencies assess both the costs and benefits of significant regulatory actions. Under Executive Order 12866, section 3(f), a “significant regulatory action” is one that meets any of several specified conditions, including the following: Having an annual effect on the economy of \$100 million or more; creating a serious inconsistency or interfering with an action of another agency; materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues.

The Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget (OMB) has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f) and waived review. This rule simply provides persons with alternative options for providing CMP payments to WHD and removes detailed, somewhat inconsistent instructions for mailing or delivering checks or money orders for CMP payments. It does not impose any costs on employers or other persons, and does not meet any of the criteria for an economically significant rule specified by the Executive Order. Accordingly, there is no requirement for an assessment of potential costs and benefits under section 6(a)(3) of the order.

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the APA, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2). Accordingly, the Department is not required to either certify that the final rule would not have a significant economic impact on a substantial number of small entities or conduct a regulatory flexibility analysis.

V. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) requires that the Department consider the impact of paperwork and other information collection burdens imposed on the public. The Department has determined that this final rule is not subject to the PRA because any information collected under this rule is collected during the conduct of Department investigations, civil actions to which the agency is a party, or administrative proceedings, and therefore is exempt from the PRA’s requirements. *See* 44 U.S.C. 3518; 5 CFR 1320.4(a)(2).

VI. Unfunded Mandates Reform Act

This Final Rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 et seq. For the purposes of the UMRA, this rule does not impose any Federal mandate that may result in increased expenditures by State, local or Tribal governments, or increased expenditures by the private sector, of more than \$100 million in any year.

VII. Executive Order 13132 (Federalism)

The Department has reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999). This rule does not have federalism implications as outlined in Executive Order 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

VIII. Executive Order 13175, Indian Tribal Governments

The Department has reviewed this rule under the terms of Executive Order 13175 and determined it did not have “tribal implications.” The rule does not have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.” As a result, no Tribal summary impact statement has been prepared.

List of Subjects

29 CFR Part 500

Administrative practice and procedure, Aliens, Housing, Insurance, Intergovernmental relations, Investigations, Migrant labor, Motor vehicle safety, Occupational safety and health, Penalties, Reporting and recordkeeping requirements, Wages, Whistleblowing.

29 CFR Part 501

Administrative practice and procedure, Agriculture, Aliens, Employment, Housing, Housing standards, Immigration, Investigations, Labor, Migrant labor, Penalties, Transportation, Wages.

29 CFR Part 580

Administrative practice and procedure, Child labor, Penalties, Wages.

29 CFR Part 801

Administrative practice and procedure, Employment, Lie detector tests, Penalties, Reporting and recordkeeping requirements.

Dated: October 25, 2019.

Cheryl M. Stanton,
Administrator.

For the reasons set forth above, the Department of Labor amends Title 29, Parts 500, 501, 580, and 801 of the Code of Federal Regulations as follows:

PART 500—MIGRANT AND SEASONAL AGRICULTURAL WORKER
PROTECTION

1. The authority citation for part 500 continues to read as follows:

Authority: Pub. L. 97-470, 96 Stat. 2583 (29 U.S.C. 1801-1872); Secretary's Order No. 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114-74, 129 Stat. 584.

2. Revise § 500.144 to read as follows:

§ 500.144 Civil money penalties—payment and collection.

Where the assessment is directed in a final order by the Secretary or in a final judgment issued by a United States District Court, the amount of the penalty is immediately due and payable to the United States Department of Labor. The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at www.pay.gov or any successor system; or by any additional payment method deemed acceptable by the Department.

PART 501— ENFORCEMENT OF CONTRACTUAL OBLIGATIONS FOR
TEMPORARY ALIEN AGRICULTURAL WORKERS ADMITTED UNDER
SECTION 218 OF THE IMMIGRATION AND NATIONALITY ACT

3. The authority citation for part 501 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188; 28 U.S.C. 2461 Note (Federal Civil Penalties Inflation Adjustment Act of 1990); and Pub. L. 114-74 at §701.

4. Revise § 501.22 to read as follows:

§ 501.22 Civil money penalties—payment and collection.

Where a civil money penalty is assessed in a final order by the WHD Administrator, by an ALJ, or by the Administrative Review Board (ARB), the amount of the penalty must be received by the WHD Administrator within 30 days of the date of the final order. The person assessed such penalty shall remit the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at www.pay.gov or any successor system; or by any additional payment method deemed acceptable by the Department.

**PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND
CONTESTING PENALTIES**

5. The authority citation for part 580 continues to read as follows:

Authority: 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary's Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014); 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

6. Revise § 580.18(a) to read as follows:

§ 580.18 Collection and recovery of penalty.

(a) When the determination of the amount of any civil money penalty provided for in this part becomes final under § 580.5 in accordance with the administrative assessment thereof, or pursuant to the decision and order of an Administrative Law Judge in an administrative proceeding as provided in § 580.12, or the decision of the Board pursuant

to § 580.16, the amount of the penalty as thus determined is immediately due and payable to the U.S. Department of Labor. The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at www.pay.gov or any successor system; or by any additional payment method deemed acceptable by the Department.

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PART 801—APPLICATION OF THE EMPLOYEE POLYGRAPH PROTECTION ACT OF 1988

7. The authority citation for part 801 continues to read as follows:

Authority: Pub. L. 100-347, 102 Stat. 646, 29 U.S.C. 2001-2009; 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990); Pub. L. 114-74 at § 701, 129 Stat 584.

8. Revise § 801.43 to read as follows:

§ 801.43 Civil money penalties—payment and collection.

Where the assessment is directed in a final order of the Department, the amount of the penalty is immediately due and payable to the United States Department of Labor.

The person assessed such penalty shall remit promptly the amount thereof, as finally determined, to the Secretary. Payment shall be made by certified check or money order made payable and delivered or mailed according to the instructions provided by the Department; through the electronic pay portal located at www.pay.gov or any successor system; or by any additional payment method deemed acceptable by the Department.